

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES FIDELITY AND)	
GUARANTY COMPANY, a Maryland)	
Corporation,)	
)	
)	Case No. 00 C 5632
Plaintiff,)	
v.)	
)	Judge Joan B. Gottschall
GRAHAM CONSTRUCTION COMPANY,)	
)	
Defendant.)	

ORDER

United States Fidelity and Guaranty Company (“USF&G”) brought this declaratory judgment action against Graham Construction Company (“Graham”), seeking a declaration that USF&G is not obligated to indemnify and defend Graham in an arbitration incident to an action pending in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois (“the underlying litigation”). The underlying litigation involves claims arising out of the allegedly improper construction of a building by Graham for Cree Development Corporation in Springfield, Illinois. Graham has moved to dismiss this action for improper venue or alternatively to transfer it to the United States District Court for the Central District of Illinois, the place where the underlying litigation and the arbitration incident to it are taking place.

In an order entered on February 7, this court noted that the only connection the Northern District of Illinois bears to this dispute or to its parties is that USF&G has a claims processing facility in Chicago to which Graham’s notice of claim was sent by USF&G (after the notice of claim was

received at USF&G's loss reception center in Florida) because Chicago is the USF&G claims processing facility located closest to the situs where the claim arose, in the Central District of Illinois. The decision to deny the claim was made by this claims processing facility in Chicago. Relying on *Evangelical Lutheran Church v. Atlantic Mut. Ins. Co.*, 973 F.Supp. 820, 832 (N.D.Ill. 1997), the court noted that because the decision to deny coverage was made in Chicago, it can probably be said that "a substantial part of the events or omissions giving rise to the claim" occurred here, making venue in this district permissible. The court invited the parties to supplement their submissions.

Having reviewed the parties' supplemental filings, the court is persuaded that the better venue for this action is the Central District of Illinois. To the extent this decision is inconsistent with the court's observations in its February 7 order, that order is hereby reconsidered.

As the court observed in its February 7 order, the only connection the Northern District of Illinois has with the parties or their dispute is that USF&G, for reasons of its own convenience, chose to assign the processing of Graham's claim to its Chicago office. While troubled that one party, for administrative convenience, could essentially create venue in the district of its choice by choosing to process there a claim arising and filed elsewhere, the court was influenced by the decision in *Evangelical Lutheran Church v. Atlantic Mut. Ins. Co.*, 973 F. Supp. 820, 823 (N.D. Ill. 1997), noting that in a coverage dispute, the key event is the decision to deny coverage, not the events of the underlying litigation. On further review, however, the court notes that the connection of New York to the dispute in *Evangelical Lutheran Church* was not limited to claims processing. Rather, Atlantic Mutual was a New York corporation with its principal place of business in New York. The decision to deny coverage in *Evangelical Lutheran Church* was made in New York because the insurer

conducted its business in New York. In this case, to the contrary, witnesses involved in policy drafting and policy interpretation are located in North Carolina and Maryland, where USF&G is incorporated. The claims processing that took place in Chicago in the instant case was an isolated and fortuitous aspect of the parties' relationship.

USF&G chose the Northern District as its forum, but where the forum chosen lacks any significant connection to the claim, the plaintiff's choice of forum is of reduced importance. *See General Accident Ins. Co. v. Travelers Corp.*, 666 F.Supp. 1203, 1206 (N.D.Ill. 1987). While the Northern District is a more convenient forum for USF&G, because it has an office here and apparently does not have one in the Central District, the Central District is manifestly the more convenient location for Graham, which is already engaged in the underlying litigation there and has no connection of any kind to the Northern District. Nevertheless, the court is hard-pressed to see that the balance of convenience favors USF&G. The only witnesses and evidence it has in the Northern District are possibly some witnesses to the underwriting of its construction policies (USF&G has stated that its underwriting witnesses reside either in Chicago or in Atlanta, Georgia)¹ and witnesses involved in the processing of the claim. Should evidence concerning the meaning of the policy become relevant, the witnesses and documents relating to that issue are in North Carolina and Maryland. While it is likely

¹Actually, in its Response in Opposition to Defendant's Motion to Dismiss or Transfer, USF&G stated that "Plaintiff's construction underwriters are located in Atlanta, Georgia." (Response at 2.) At page 7 of the same Response, it stated that "those who may be called to testify regarding the underwriting of the CGL Policy reside either in Chicago or in Atlanta, Georgia." (In both cases, it cites to affidavits which are not attached to the filed copy of the Response.) In its Supplemental Brief in Opposition at page 10, USF&G states that "USF&G's construction underwriters are located in Chicago."

that this case will be resolved on summary judgment and no witnesses will be called by either party, it is more likely that if the case is not resolved on summary judgment, witnesses with knowledge relating to the interpretation of policy language will be more relevant than witnesses who were involved in the decision to deny the claim.

With respect to the convenience of the witnesses, it is, the court repeats, unlikely that any witnesses will be necessary in this case. But if any aspect of the case goes to trial, the convenience of witnesses factor favors the Central District. Graham has brought to the court's attention a number of Illinois cases that indicate that under some circumstances, extrinsic evidence relating to the incident giving rise to the claim may be relevant. *See Farmers Auto. Ins. Ass'n v. Country Mut. Ins. Co.*, 722 N.E.2d 1228, 1232 (Ill.App.Ct. 2000); *Fremont Compensation Ins. Co. v. Ace-Chicago Great Dane Corp.*, 710 N.E.2d 132, 138-39 (Ill.App.Ct. 1999). Should extrinsic evidence be necessary, as unlikely as that is, that evidence is in the Central District.

Finally, the court must consider the interests of justice. The factors normally considered as part of the interest of justice analysis are not present here. *See generally Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220-21 (7th Cir. 1986) (discussing the meaning of "interest of justice" in the venue context). Nevertheless, as the court has pointed out, it is troubled by the fact that one party, here USF&G, can essentially create a basis for venue by siting a claims processing facility, for its own convenience, in a certain district. Moreover, the basis for USF&G's decision to process the claim here was that this district was the most convenient to the Central District, where the underlying litigation is going on. Thus, the only relationship the Northern District has to this dispute is that the Northern District is the place USF&G found most conveniently situated relative to the Central District.

Given that neither party resides here, the contract was negotiated elsewhere, the claim was required to be submitted elsewhere, the underlying litigation which gave rise to this coverage dispute is elsewhere and there is little if any likelihood that any witnesses from the Northern District will be called at trial in this action, the Northern District of Illinois is an inconvenient venue for this action. As between the Northern District and the Central District, the relevant factors favor the Central District.

Graham's Motion to Transfer is granted. This case is transferred to the United States District Court for the Central District of Illinois.

ENTER:

JOAN B. GOTTSCHALL
United States District Judge

DATED: April 5, 2001